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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,707	05/14/2007	Christian Claudepierre	10191/4771	9604
26646 7590 10/04/2011 KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004			EXAMINER COLEMAN, KEITH A	
			ART UNIT 3783	PAPER NUMBER
			MAIL DATE 10/04/2011	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/579,707

Applicant(s)

CLAUDEPIERRE ET AL.

Examiner

KEITH COLEMAN

Art Unit

3783

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 12, 13, 20-25 and 32-35 is/are pending in the application.
- 5a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 12, 13, 20-25, and 32-35 is/are rejected.
- 8) ☐ Claim(s) ____ is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date ____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 12, 13, 20-25, and 32-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matischuk et al. (WO/2001/044639).

With regards to claims 12 and 23, the patent to Matischuk et al. discloses specifying a setpoint (i.e. MSOLL1, MSOLL2, TSOLL1, and TSOLL2, See Page 6, Lines 20-35 for a desired torque) for at least one output variable of the drive unit (i.e. motor and transmission, See Page 4, Lines 15-20); and specifying a setpoint (i.e. setting a setpoint value pair MSOLLRES and TSOLLRES via coordinator 100 for ignition timing and air supply, See Page 6, Lines 20-25) for an operating variable of the drive unit in at least one operating state of the drive unit (i.e. during normal and starting operating conditions, See Page 6, Lines 10-25); wherein, in the at least one operating state of the drive unit (i.e. air supply, ignition, engine speed, engine load, See Page 6, Lines 20-35), the at least one output variable (i.e. desired torque) of the drive unit is specified regardless of the setpoint for the at least one output variable (i.e. via the coordinator 100, See Page 6, Lines 20-35), by approximating an actual value for the operating variable to the setpoint for the operating variable (i.e. the actual torque is matched to the desired torque, See Page 6, Lines 20-35).

As to the newly added limitations of "without consideration of the setpoint for the at least one output variable, the at least one output variable is one of a torque and a power of the drive unit, the operating variable is a speed of an engine of the drive unit, and the at least one operating state is a start-up operating state of the drive unit," the patent to Matischuk et al. teaches on Page 6 that the set point may be printed to an appropriate target with all or some of the values in a different embodiment.

As such, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the first embodiment of Matischuk et al. with the second embodiment such that the target valves area ascertained without consideration of the setpoint for the at least one output variable, the at least one output variable is one of a torque and a power of the drive unit, the operating variable is a speed of an engine of the drive unit, and the at least one operating state is a start-up operating state of the drive unit. in order to improve optimization of fuel consumption and ignition timing.

With regards to claims 13, 25, and 32-35, the patent to Matischuk et al. discloses specifying a setpoint (i.e. MSOLL1, MSOLL2, TSOLL1, and TSOLL2, See Page 6, Lines 20-35 for a desired torque) for at least one output variable of the drive unit (i.e. motor and transmission, See Page 4, Lines 15-20); specifying a setpoint (i.e. setting a setpoint value pair MSOLLRES and TSOLLRES via coordinator 100 for ignition timing and air supply, See Page 6, Lines 20-25) for an operating variable of the drive unit (i.e. motor and transmission, See Page 4, Lines 15-20) in at least one operating state of the drive unit; and modifying the at least one output variable of the drive unit (i.e. the actual torque to match desired torque) in the at least one operating state of the drive unit, starting from the setpoint for the at least one output variable (i.e. the desired torque), by approximating an actual value for the operating variable to the setpoint for the operating variable (i.e. gear switching actions, See Page 10, Lines 5-15); wherein the at least one operating state of the drive unit includes a gear shift operation of a transmission (i.e. gear switching actions, See Page 10, Lines 5-15).

With regards to claim 20, the patent to Matischuk et al. discloses wherein the at least one output variable of the drive unit is specified by a regulator (i.e. the accelerator pedal via acceleration position parameter as discussed on See Page 4, Lines 25-35).

With regards to claim 24, the patent to Matischuk et al. discloses an arrangement (via coordinator 100, See Figure 2) for specifying a setpoint for at least one output variable of the drive unit (i.e. setting a set-point value pair MSOLLRES and TSOLLRES via coordinator 100 for ignition timing and air supply, See Page 6, Lines 20-25); a first specification unit (i.e. example of a traction control system, 104, See Page 6, Lines 25-35) for specifying a setpoint for an operating variable of the drive unit in at least one operating state of the drive unit; and a second specification unit (i.e. converter 102 as discussed on Page 6, Lines 20-25) for specifying, in the at least one operating state, the at least one output variable of the drive unit regardless of the setpoint for the at least one output variable, by approximating an actual value for the operating variable to the setpoint for the operating variable (i.e. setting a set-point value pair MSOLLRES and TSOLLRES via coordinator 100 for ignition timing and air supply, See Page 6, Lines 20-25).

With regards to claims 21 and 22, the patent to Matischuk discloses wherein a drive unit (i.e. an internal combustion engine, See Page 4, Lines 15-20) is operated with

an internal combustion engine, and wherein a first output variable of the drive unit is specified for an ignition path (i.e. setting a set-point value pair MSOLLRES and TSOLLRES via coordinator 100 for ignition timing, See Page 6, Lines 20-25) of the internal combustion engine, and a second output variable of the drive unit is specified for an air path (i.e. setting a set-point value pair MSOLLRES and TSOLLRES via coordinator 100 for air supply, See Page 6, Lines 20-25) of the internal combustion engine.

Response to Arguments

1. Applicant's arguments filed 2/28/2011 have been fully considered but they are not persuasive.

Examiner's Response to Arguments

Applicant's arguments with respect to claims 12, 13, 20-25, and 32-35 have been considered but are moot in view of the new ground(s) of rejection.

The patent to Matischuk et al. teaches in a different embodiment that the set point may be printed or set to an appropriate target with all or some of the values. As such, the newly added limitations are deemed obvious over the cited prior art.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KEITH COLEMAN whose telephone number is (571)270-3516. The examiner can normally be reached on 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Cuff can be reached on 571-272-6778. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KAC
/K. C./
Examiner, Art Unit 3783

/Michael Cuff/
Supervisory Patent Examiner, Art Unit 3783